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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,431	02/02/2001	Jude S. Sauer	LS-002	5301

7590 01/27/2003

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EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 01/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/776,431

Applicant(s)

SAUER ET AL.

Examiner

Robert H Muromoto, Jr.

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The abstract of the disclosure is objected to because it is too long, the abstract should be 150 words or less. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swain et al. '153 and '730, in view of Yoon '731.

As recited in the background of the invention section of the instant specification, Swain '153, and '730, teach a sewing device coupled to the distal end of an endoscope, which enables suturing in the gastroesphageal tract; and a device for securing and cutting sutures using an endoscope. The teachings of Swain '153 and '730 provide all the functions of the instant invention as recited in lines 3, pg. 2 – lines 1-8 pg. 3, of the instant specification. They do not teach a system in which the suturing and cutting functions are performed within one endoscopic device.

However, Yoon, teaches a surgical instrument with multiple rotatably mounted end effectors that allow medical procedures that had previously used multiple insertions steps to be performed with only one insertion and therefore reducing the invasiveness and healing time for the patient. Yoon teaches an instrument for performing internal

Art Unit: 3765

surgical procedures that includes a housing and a distal end with a periphery edge, a first end effector assembly protruding from the distal end and a second end effector assembly protruding from the distal end of an elongate shaft. A pair of collars 20a and 20b are disposed axially along the length of the shaft.

Fig. 4 shows the elongate shaft 16, which is of cylindrical configuration with a plurality of longitudinally extending passages or channels 22a, 22b, 22c, 22d, 22e. Channels 22a-e can alternately be formed by thin wall tubular sleeves extending longitudinally through shaft 16. The end effectors 18a and 18b shown in figures as forceps, can be changed to any suitable surgical member for endoscopic procedures such as needle holders, staplers, scissors, clip applicators, etc. (col. 6, lines 52-590). The effectors 18 a, b, can also perform procedures such as suturing (col. 7, line 25-35).

Therefore at the time of invention to one of ordinary skill in the art it would have been obvious to combine the teachings of Swain et al. '153 and '730 to the teachings of Yoon to provide an endoscopic suturing device which would put the suturing device, and cutting device on the same apparatus to reduce the number of insertion steps in the suturing procedure which would decrease the invasiveness of the procedure and the healing time of the patient.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sutcu et al. teaches bipolar surgical devices and methods, and Sugarbaker et al. teaches a tissue grasping device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

bhm  
January 21, 2003

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700